

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7023

Joint Petition of Broadview Networks, Inc.,)
and Broadview NP Acquisition Corporation)
for Approval of a Transfer of Control)

Order entered: 1/5/2005

I. INTRODUCTION

On November 1, 2004, Broadview Networks, Inc. ("Broadview Networks"), and Broadview NP Acquisition Corporation ("Broadview NP") (jointly the "Petitioners"), filed a petition ("Petition") and Telecommunications Merger and or Acquisition Request for Approval Form ("Request Form") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. § 107, for approval of an indirect transfer of control of Broadview Networks and Broadview NP. Supplements and amendments to the original Petition were filed on November 16, 20, and 30, 2004.

On January 3, 2005, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the transfer of control because the proposed transaction would not detrimentally impact Vermont consumers or cause them inconvenience or confusion. The Department further recommended the Board approve the Petition without further investigation or hearing.

The Board has reviewed the Petition and the accompanying documents and agrees that approval should be granted without hearing.

II. FINDINGS OF FACT

Based upon the Petition and accompanying documents, we hereby make the following findings of fact.

1. Broadview Networks was issued a Certificate of Public Good (CPG No. 643) to provide telecommunications services in Vermont on June 13, 2001. Petition at 4.
2. Broadview Networks was issued a Certificate of Public Good to provide telecommunications services in Vermont in Docket No. 6694, on July 1, 2002. Petition at 5.
3. Petitioners are wholly-owned subsidiaries of Broadview Network Holdings, Inc. As the result of a merger transaction, Broadview Network Holdings, Inc., will become a subsidiary

of MCG Capital Corporation. November 30, 2004, supplement to Petition at 1-3.

4. Following the transaction, Petitioners will continue to operate under its current name and tariff. Accordingly, the transfer will not cause any inconvenience for Vermont consumers. Petition at 7.

5. The proposed transaction will promote the public interest by allowing Petitioners access to additional financial and operational resources, thereby enhancing Petitioners' ability to compete in the telecommunications market and ensuring the continued existence of telecommunications competition in Vermont. Petition at 8.

III. DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A. § 107. This statute conditions approval of a proposed transfer of control upon findings that the transfer of control will promote the public good (30 V.S.A. § 107). This standard is met in this case.

Under 30 V.S.A. § 107(a), "[n]o company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the [Board] . . . without the approval of the [Board]." "Controlling interest" is defined as "ten percent or more of the outstanding voting securities of a company" or such other interest as the Board determines "to constitute the means to direct or cause the direction of the management or policies of a company." 30 V.S.A. § 107(c)(1).¹ In order to approve the acquisition of such a controlling interest, the Board must first find that it will "promote the public good." 30 V.S.A. § 107(b).

After reviewing the Petition, we conclude that 30 V.S.A. § 107 applies because the transaction contemplated will result in MCG Capital Corporation acquiring a controlling interest in the parent corporation of the Petitioners, resulting in the indirect transfer of controlling interest of Petitioners. We further conclude that the transfer of control will not affect the services that Petitioners currently provide to customers in Vermont. Petitioners will continue to operate under their respective current names and tariffs. The proposed transaction will also allow Petitioners greater access to capital, which may, in turn, result in enhanced competition among providers of telecommunications services in Vermont. The resulting transfer of control, therefore, will

1. The statute also provides that "[t]he presumption that ten percent or more of the outstanding voting securities of a company constitutes a controlling interest may be rebutted by a company under procedures established by the board by rule." 30 V.S.A. § 107(c)(1).

promote the public good. For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. § 107 and should be approved.

IV. CONCLUSIONS

The indirect transfer of control of Petitioners should be approved because the transaction will promote the public good of the State of Vermont and will not result in obstructing or preventing competition. 30 V.S.A. § 107(b).

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The transfer of control of Broadview Networks, Inc., and Broadview NP Acquisition Corporation, will promote the public good and, therefore, is approved.
2. Petitioners shall file a letter notifying the Board of the completion of the transaction within one week of such completion.

DATED at Montpelier, Vermont, this 5th day of January, 2005.

<u>s/Michael H. Dworkin</u>)	
)	
)	PUBLIC SERVICE
<u>s/David C. Coen</u>)	
)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

Filed: January 5, 2005

Attest: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.